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FILED

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CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM 1942

No. 337

ARMAND TOKATYAN,

Petitioner,

against

MAX CHOPNICK,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT, AND BRIEF IN SUP-
PORT THEREOF.

Benjamin Pepper

LOUIS P. RANDELL,
Attorney for Petitioner.

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No. _____.

ARMAND TOKATYAN,

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against

MAX CHOPNICK,

Respondent.

Petition for Writ of Certiorari

TO THE HONORABLE THE CHIEF JUSTICE AND ASSOCIATE
JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The undersigned, on behalf of the above named Petitioner, prays that a writ of certiorari issue to review the determination of the United States Circuit Court of Appeals for the Second Circuit, which reversed an order of the United States District Court for the Southern District of New York, which order denied a motion by respondent to vacate an ex-parte order of the said District Court restraining and enjoining the respondent from proceeding with two certain actions brought by the respondent against the petitioner in the City Court of the City of New York, State of New York.

Statement

The bankrupt had obtained a discharge in a bankruptcy proceeding, on February 20th, 1935. On November 12th, 1940, the bankrupt filed a second petition in bankruptcy. In this proceeding, a discharge was denied him on the ground that six years had not elapsed between the bankrupt's discharge in the first proceeding and the filing of

his petition in the second proceeding. Thereafter, on October 8th, 1941, which was subsequent to six years from the discharge granted in the first proceeding, the bankrupt filed his bankruptcy petition in the present proceeding.

In this proceeding, the bankrupt obtained an order staying two actions brought by the respondent in the Courts of the State of New York, which were based upon a contract liability for services rendered by the respondent to the bankrupt. An application by the respondent to vacate this stay was denied by Judge Conger, District Judge of the Southern District of New York. On appeal, the order of Judge Conger was reversed by the Circuit Court of Appeals, Second Circuit, by order dated May 25th, 1942. The reversal was accompanied by an opinion written for the Court by Judge Swan.

Reasons for Granting the Writ

- 1—The decision of the Circuit Court below, 128 Fed. (2d) 521, is in direct conflict with the decision of the Circuit Court of Appeals for the Fifth Circuit, in the case of *Prudential Loan v. Roberts*, 52 Fed. (2d) 918.
- 2—The Court below erred in holding that the denial of a discharge in bankruptcy because of a prior discharge within six years, acts as a bar to a discharge in a subsequent bankruptcy proceeding brought after the expiration of six years.
- 3—The Court below erred in holding that the bankrupt was not entitled to a stay of proceedings under Section 11, subdivision a, of the Bankruptcy Act.

WHEREFORE, it is respectfully submitted that this petition for a Writ of Certiorari to review the Order and Judgment of the Circuit Court of Appeals for the Second Circuit should be granted.

Dated, August 18, 1942.

LOUIS P. RANDELL,
Attorney for Petitioner.

